TRANSCRIPT OF PROCEEDINGS

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION WASHINGTON, D.C. 20554

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In the Matter of:	
David L. Titus	EB Docket No. 07-13
DATE OF HEARING:JULY 14, 2008	VOLUME:6

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BEFORE THE FEDERAL COMMUNICATIONS COMMISSION WASHINGTON, D.C. 20554

IN THE MATTER OF:

EB Docket No.

DAVID L. TITUS

: 07-13

Application to Renew License FRN No. for Amateur Radio Service : 0002074797 ...

Station KB7ILD

Monday, July 14, 2008

VOLUME VI

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The above-entitled matter came on for hearing, pursuant to notice, at 9:40 a.m. BEFORE:

> THE HONORABLE RICHARD L. SIPPEL Administrative Law Judge

APPEARANCES:

On Behalf of the Enforcement Bureau:

. WILLIAM H. KNOWLES-KELLETT, ESQ.
JUDITH LANCASTER, ESQ.
Investigations and Hearings Division
Enforcement Bureau
Federal Communications Commission
1270 Fairfield Road
Gettysburg, PA 17325
(717) 338-2505

On Behalf of David L. Titus:

GEORGE L. LYON, JR., ESQ.
Of: Lukas, Nace, Gutierrez & Sach, Chartered 1650 Tysons Blvd., Suite 1500
McLean, VA 22012
(703) 584-8696

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(9:37 a.m.)

JUDGE SIPPEL: This is 14 July, 2008, the admission session in the matter of David L. Titus. Counsel have all given their appearances to the reporter, Mr. Knowles-Kellett and Ms. Judy Lancaster on behalf of the Bureau; and Mr. George Lyon on behalf of Mr. Titus. This is a revocation proceeding against an amateur radio license held by Mr. Titus based on allegations and an order to show cause, DA073-377, issued by the Chief of the Enforcement Bureau on January 30, 2007. Pursuant to delegated authority and the burdens of proceeding and proof on all the issues have been assigned to the Enforcement Bureau.

Are you ready to proceed on this then, Ms. Lancaster and Mr. Knowles-Kellett?

MR. KNOWLES-KELLETT: Yes, your Honor.

MS. LANCASTER: Yes, sir.

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1	JUDGE SIPPEL: Okay. You may
2	proceed.
3	MR. KNOWLES-KELLETT: Okay. Our
4	exhibits are in a notebook previously
5	delivered to Mr. Lyon and your Honor, with the
6	exception of the testimony of Robert Shilling.
7	By agreement and by the statements in the
8	previous conference, we've met with Mr. Lyon
9	and removed particular objectives. We worked
10	the testimony to be less objectionable. That
11	testimony was delivered this morning.
12	JUDGE SIPPEL: I have a copy.
13	Thank you.
14	MR. KNOWLES-KELLETT: Okay. Mr.
15	Lyon has got a copy, as well. Okay. Our
16	Exhibit Number 1 is a three-page exhibit.
17	It's a reference copy of Mr. Titus' amateur
18	radio license for station KB7ILD.
19	(Whereupon, the above-referred to
20	document was marked as Government
21	Exhibit No. 1 for identification.)
22	JUDGE SIPPEL: How many pages?

1	MR. KNOWLES-KELLETT: Three pages.
2	JUDGE SIPPEL: Okay. Can you get
3	two copies to the reporter?
4	MR. KNOWLES-KELLETT: Yes. I've
5	got notebooks made up for the reporter, your
6	Honor.
7	JUDGE SİPPEL: Well, hold on just
8	a second. The reporter just has to note these
9	down in his record as they're coming in. He
10	doesn't have to actually see them, so
11	whichever is easier
12	MR. KNOWLES-KELLETT: I have no
13	problem. I thought for a moment, your Honor,
14	that mine didn't have a table of contents, but
15	it did.
16	JUDGE SIPPEL: All right. So the
17	reporter now has two copies of all the
18	exhibits from the Bureau that's going to be
19	tendered, and the first one is this Exhibit 1
20	as you've described it, which is the amateur
21	radio license of Mr. Titus.

MR. KNOWLES-KELLETT:

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It's just a

1	reference copy of the amateur radio license.
2	JUDGE SIPPEL: What does a
3	reference copy mean?
4	MR. KNOWLES-KELLETT: The copy
5	mailed for posting is slightly different than
6	the one that comes out of our computer. When
7	he has posted his amateur radio station, it
8	will be in a different format. Reference copy
9	is when anybody looks up your license on the
10	database that's what they get.
11	JUDGE SIPPEL: The reference copy?
12	MR. KNOWLES-KELLETT: Correct.
13	It's all the same information, but it doesn't
14	say this is certified, this is a license for
15	David L. Titus.
16	JUDGE SIPPEL: Does Mr. Titus,
17	does he have to have this thing posted some
18	place, like on his door or something?
19	MR. KNOWLES-KELLETT: I don't know
20	what the rules are with respect to
21	broadcast licensees have to post them. I'm
22	not sure that amateurs have to post them.

1	However, they are given a license fit for
2	posting.
3	JUDGE SIPPEL: All right. Not
4	important. I just was trying to
5	MR. KNOWLES-KELLETT: Understand.
6	JUDGE SIPPEL: get a full
.1	picture here. Okay. Is there any objection
8	then to the Bureau's Exhibit 1?
9	MR. LYON: No objection, your
10	Honor.
11	JUDGE SIPPEL: It's in as Bureau
12	Exhibit 1.
13	(Whereupon, Government Exhibit No.
14	1 was received into evidence.)
15	MR. KNOWLES-KELLETT: Okay.
16	Exhibit Number 2 is the written testimony of
17	Detective Robert Shilling. It's a nine-page
18	exhibit. It's mislabeled in the table of
19	contents as a ten-page exhibit. As previously
20	explained, we reworked it and removed certain
21	passages.
22	(Whereupon, the above-referred to

1	document was marked as Government
2	Exhibit No. 2 for identification.)
3	JUDGE SIPPEL: Well, let's say
4	it's identified at this point as the Bureau
5	Exhibit 2, and will there be an objection to
6	it received into evidence?
7	MR. LYON: No, your Honor.
8	JUDGE SIPPEL: Okay. Very well.
9	It is marked received into evidence as of this
10	date, July 14th, '08.
11	(Whereupon, Government Exhibit No.
12	2 was received into evidence.)
13	JUDGE SIPPEL: Your next exhibit?
14	MR. KNOWLES-KELLETT: Exhibit
15	Number 3 is a 17-page exhibit, and it's a
16	curriculum vitae for Detective Shilling.
17	(Whereupon, the above-referred to
18	document was marked as Government
19	Exhibit No. 3 for identification.)
20	JUDGE SIPPEL: How many pages?
21	MR. KNOWLES-KELLETT: Seventeen,
22	your Honor.

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1	JUDGE SIPPEL: Okay. Is there any
2	well, let's mark it. It's marked as your
3	Exhibit 3. Is there any objection to it?
4	MR. LYON: No, your Honor.
5	JUDGE SIPPEL: It is also received
6	as Exhibit 3, marked and identified.
7	(Whereupon, Government Exhibit No.
8	3 was received into evidence.)
9	JUDGE SIPPEL: Next Exhibit?
10	MR. KNOWLES-KELLETT: Exhibit
11	Number 4 is actually Detective Shilling's sex
12	offender file that he maintains as part of his
13	official duty in the Seattle Police Department
14	regarding Mr. Titus. It's a 45-page exhibit
15	and
16	JUDGE SIPPEL: I have it.
17	MR. KNOWLES-KELLETT: it's
18	slightly mis-characterized as the criminal
19	file of David L. Titus in our table of
20	contents. It's really his registered sex
21	offender file, but it contains some of his

22

criminal records.

1	(Whereupon, the above-referred to
2	document was marked as Government
3	Exhibit No. 4 for identification.)
4	JUDGE SIPPEL: Well, your index is
5	going to be part of the record. I think it
6	would be appropriate at this time you can make
7.	the change in pen. But criminal file should
8	be changed to, you know, the
9	MR. KNOWLES-KELLETT: Sex
10	offender's file.
11	JUDGE SIPPEL: you've given it.
12	MR. KNOWLES-KELLETT: Okay. I'm
13	going to change it to sex offender file.
14	JUDGE SIPPEL: Fine. Let me go
15	off the record for just a minute.
16	
	(Whereupon, the foregoing matter
17	(Whereupon, the foregoing matter went off the record at 9:44 a.m. and resumed
17 18	
	went off the record at 9:44 a.m. and resumed
18	went off the record at 9:44 a.m. and resumed at 9:44 a.m.)
18 19	went off the record at 9:44 a.m. and resumed at 9:44 a.m.) JUDGE SIPPEL: Okay. Back on the

1	evidence at this time?
2	MR. KNOWLES-KELLETT: Yes, your
3	Honor.
4	JUDGE SIPPEL: In a confidential
5	status?
6	MR. KNOWLES-KELLETT: I believe
7	so. Detective Shilling actually asked us,
8	because it includes records of minor
9	adjudications, to maintain the confidentiality
10	of the material, and Mr. Lyons hasn't objected
11	to that at all. I think, in fact, we entered
12	into a protective order to maintain its
1.3	status.
14	JUDGE SIPPEL: Right, up until the
15	hearing.
16	MR. KNOWLES-KELLETT: If you're
17	troubled by it, your Honor, we're open to
18	discuss it.
19	MS. LANCASTER: If I might
20	interject something, your Honor, some of these
21	minor adjudications have been publically
22	released, so not everything in this file would

1 need to be confidential. But there are some 2 things in here that, perhaps, haven't been 3 publically released and would not normally be 4 available, and those things we would maintain 5 would be confidential. LYON: The names of the MR. 6 7 minors, for instance, your Honor, certainly would be confidential. I would prefer, your 8 Honor, if we can make the entire exhibit 9 confidential. I realize that some of these 10 matters may have been publically released. 11 You're going to hear an objection from me in 12 a second to the use of some of these materials 13 14 because of the hearsay and best evidence and 15 because there are contradictions 16 the offenses explanations of at various So I'd rather, if we can, to keep 17 points. 18 this confidential. I don't think there's any of releasing this 19 good that out comes 20 material. JUDGE SIPPEL: Bureau? 21

MR. KNOWLES-KELLETT:

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That's our

position, as well, your Honor. We don't see 1 any good. To the extent that the public needs 2 to know the information has been put into 3 4 bulletins that are available on the web. JUDGE SIPPEL: Well, how is this 5 going to affect writing a decision? 6 MR. KNÓWLES-KELLETT: I think to 7 the extent that you need to rely on it, you 8 write your decision. But the documents 9 10 themselves --JUDGE SIPPEL: In some way, shape, 11 or form, I may have to disclose some of it. 12 certainly would have no interest 13 disclosing names of victims; but, somehow or 14 another, this could be a very significant part 15 16 of the evidence, whether it's in or out. MS. LANCASTER: I'm sorry, if I 17 interject. Your Honor, I know that on 18 the sex offender notice that was released to 19 the public, for example, it discusses his 20 adjudications as a minor. So if you want to 21

call them convictions or whatever you want to

call them, they've been released to the public, so there should not be any problem with you discussing those, for example.

JUDGE SIPPEL: Well, I mean, we can work with what we have now in confidential basis going into the testimony even tomorrow. But maybe there's a way that you could break out that which is clearly public from that which is not. Even if you wanted to leave this intact as it is, in other words the Exhibit 4A would be the full package in a confidential form, and Exhibit 4B would be those portions which are clearly public.

MR. LYON: Your Honor, I don't have a problem with the sex offender notifications being public since they are. I do have issues, I have hearsay and best evidence issues with the discussions of the offenses and treatment and so forth because they're secondary sources and, in some cases, contradicted by the primary sources that are in here. But, nevertheless, they are public,

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and I certainly don't have a problem with it.

Perhaps the way to handle it, your Honor, is if you need to cite something to write your decision, you can make the determination at that time that it become public.

JUDGE SIPPEL: Well, I could do that or would do that with respect to those matters which have been treated or are going to be treated as confidential. I mean, in connection with my initial decision, if I need the evidence to write about, I'm going to use it. I don't want to use anything that I don't need to use, and I certainly don't want to use But I'll go back to what I said names. before: Ms. Lancaster points out that there are certain documents within the confidential information that are clearly not. And to me, it's inconsistent with the policy of making these proceedings public to hold those back at this point.

MS. LANCASTER: Your Honor, if I may also interject, much of the information

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that's in these documents is going to be
discussed in testimony during the trial. I
mean, you're not going to, just because
something may be confidential, we're going to
ask about it. And I suspect that there will
be testimony by more than one person about
these matters that are in these documents. So
it's going to be, I think, difficult not to be
able to use that information. I think you're
probably going to have to use that
information. But perhaps what we're talking
about is maybe more releasing these documents
in total to the public. I don't think we have
any intention of doing that, do we? Do you
foresee any reason that we'd want to do that?
MR. KNOWLES-KELLETT: No.

JUDGE SIPPEL: Well, all right. My concern is a little bit different than your concern. Let me do it this way. We're going to leave everything as confidential. This exhibit will come in, subject to the objections of course. Let me say it again.

It's going to be received into evidence as confidential information with the objections and with ruling on the objections because we're going to probably be using some or all of this information in connection with examining witnesses. I will wait until the end of the hearing until it's time to close the hearing and make a determination with respect to what's going to be confidential, with your help of course, what's going to be confidential and what's going to be put in the public record.

And that can be done, say, by calling this, we can change the number to Exhibit 4A and then, you know, piece it out from there if we have to. But I can't, in conscience, just take a group of documents and sort of arbitrarily place them in a confidential envelope because some of the things in there are confidential.

But this should not be that big of a problem. And as I say, my leanings are

1	towards certainly protecting names but
2	conduct, you know, facts, that's a different
3	story. All right. So I'm ruling it, well,
4	that's my ruling. So I've got it identified
5	at this time as Bureau Exhibit Number 4, as
6	you described it, as counsel described it, and
7	it's a 45-page document. Then next it's to
8	you, Mr. Lyon.
9	MR. LYON: I'm waiting for them to
10	move it into evidence.
11	JUDGE SIPPEL: Thank you.
12	MR. KNOWLES-KELLETT: So moved.
12	MR. KNOWLES-KELLETT: So moved. MR. LYON: Your Honor, it's
13	MR. LYON: Your Honor, it's
13	MR. LYON: Your Honor, it's probably best to take this page-by-page.
13 14 15	MR. LYON: Your Honor, it's probably best to take this page-by-page. JUDGE SIPPEL: All right.
13 14 15 16	MR. LYON: Your Honor, it's probably best to take this page-by-page. JUDGE SIPPEL: All right. MR. LYON: With respect to pages
13 14 15 16 17	MR. LYON: Your Honor, it's probably best to take this page-by-page. JUDGE SIPPEL: All right. MR. LYON: With respect to pages one and two, which is the release of sex
13 14 15 16 17	MR. LYON: Your Honor, it's probably best to take this page-by-page. JUDGE SIPPEL: All right. MR. LYON: With respect to pages one and two, which is the release of sex offender special notification bulletin, I have
13 14 15 16 17 18	MR. LYON: Your Honor, it's probably best to take this page-by-page. JUDGE SIPPEL: All right. MR. LYON: With respect to pages one and two, which is the release of sex offender special notification bulletin, I have no objection to the receipt of this document

1	comments, and so forth is hearsay and not the
2	best evidence of the offenses, and that we
3	should be relying on a primary documents,
4	which are, in fact, in this exhibit. So I
5	would request that pages one through two be
6	admitted for the limited purpose of showing
7	what the notification of release level was
8	when Mr. Titus was released from confinement.
9	JUDGE SIPPEL: Any objection?
10	Well, your position? I'm sorry.
11	MR. KNOWLES-KELLETT: To the
12	extent, your Honor, that it's contrary to the
13	primary documents within, I think that you can
14	give your, you will find, you know, rely on
15	the primary documents. Otherwise, I think
16	this is part of the sex offender file, and we
17	should be able to ask witnesses about it for
18	any purpose, and you will give it the
19	appropriate weight.
20	MR. LYON: Your Honor, if I may?
21	JUDGE SIPPEL: Yes, go ahead.
22	MR. LYON: If I may respond to

1	that, I don't think that limiting this
2	document at all limits what witnesses can be
3	asked.
4	JUDGE SIPPEL: Well, let me ask
5	this question to either Mr. Lancaster or Mr.
6	Knowles-Kellett: do you expect to make
7	proposed findings based on the substance of
8	what is in this special bulletin?
9	MS. LANCASTER: Yes, sir, because
10	the substance that's in this bulletin is
11	basically a summary of substance that's in
12	other documents also and of the testimony, I
1.3	believe. I mean, that's where this
14	information came from, his criminal history,
15	and it talks about the various offenses he
16	committed.
17	JUDGE SIPPEL: This would be
18	secondary evidence. I mean, this is not the
19	best evidence of that information, which is in
20	the record.
21	MS. LANCASTER: Our problem, your
	1

Honor, in making that comment at this point,

Mr. Titus may, in fact, be the best evidence, but we don't know how accurate his testimony is going to be.

JUDGE SIPPEL: I'll just get the documents. Forget about him. Let's just say, staying with documents, there are official records in this 45-page document with which I'm not specifically familiar but which I'm accepting that are going to be duplicative of what's in the special bulletin. Not literally duplicative, but, substantiative-wise, that they're going to be duplicative.

MR. LYON: And, your Honor, I would draw your attention to pages six through ten, which is the appropriate record of his conviction with the findings of fact of the court. I think that is the best evidence of what Mr. Titus has been convicted of and of the disposition of his case. Similarly, there's a pre-sentence report at pages 11 through, it looks like 22 and a treatment summary at 22 through 29 or 30; I'm not

exactly sure where it ends. While these may still be secondary and hearsay, they're at least closer to the time and they're the documents that pages one through two purports to summarize. And I have real problems when we are relying on summaries of evidence rather than the evidence itself.

JUDGE SIPPEL: Well, okay. I certainly follow that line of reasoning. But on the other hand, this is put up with a special bulletin. This is what the public is told about this particular individual in terms of giving them notification. I guess you could be criticized, you know, depending on how you look at these things, well, we all look at these things as being offenses that are very serious, of course. But depending on how you write it, it can always be a subject of discussion or an argument.

MS. LANCASTER: Your Honor, Mr. Lyon is going to have an opportunity to question the validity of everything that's in